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Nos. 79-1404, 79-1408, 79-1414, 79-1415, and 79-1482

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

PENNHURST STATE SCHOOL AND HOSPITAL, *et al.*,
Petitioners,

v.

TERRI LEE HALDERMAN, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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REPLY BRIEF FOR PETITIONERS

HARVEY BARTLE, III
ALLEN C. WARSHAW
ROBERT B. HOFFMAN
NORMAN J. WATKINS
16th Floor, Strawberry Square
Harrisburg, Pa. 17120
717/783-1471

Attorneys for Petitioners Commonwealth of Pennsylvania, et al.

ALAN J. DAVIS
Municipal Services Building
Philadelphia, Pa. 19107
215/MU 6-5230

Attorney for Petitioners Mayor of Philadelphia, et al.

THOMAS KITTREDGE
DOUGLAS B. FOX
MORGAN, LEWIS & BOCKIUS
2107 The Fidelity Building
Philadelphia, Pa. 19109
215/875-5636

Attorneys for Suburban County Petitioners

JOEL I. KLEIN
H. BARTOW FARR, III
SUSAN L. CARNEY
ROGOVIN, STERN & HUGE
1730 Rhode Island Ave., N.W.
Washington, D.C. 20036
202/466-6464

Attorneys for Petitioner Pennhurst Parents-Staff Ass'n

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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REPLY BRIEF FOR PETITIONERS

The briefs by respondents and the amici supporting them range far and wide, addressing many issues that do not bear on the disposition of this case. Thus, respondents and amici spend considerable time relating the historical shortcomings in the quality of care provided to the mentally retarded in this country,[1] and heralding

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[1] Even the lengthy discussions of conditions at Pennhurst are not legally relevant to this case. In reaching its decision, the Court of Appeals relied only on the limited factual finding that "in general institutions are less effective than community living

community-based treatment as the ultimate panacea. While there is disagreement over the desirable *extent* of community care as an alternative to institutional placements, *see* brief amici curiae by Congress of Advocates for the Retarded, *et al.*, there is no question that all parties to this litigation seek to enhance the lot of the mentally retarded. This Court, however, is not asked to decide how best to accomplish that goal. Rather, its sole task is to discern what, if any, legally-enforceable obligations the Developmentally Disabled Assistance and Bill of Rights Act imposes on the states, and what relief is appropriate to enforce any such obligations.

On those dispositive issues, respondents have far less to say, and what they do say is often mutually inconsistent. Thus, while the Halderman and PARC respondents apparently see the source of the legal obliga-

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arrangements in facilitating the right to habilitation in the least restrictive environment." 612 F.2d at 114; 155a. The court's decision and the obligations it imposes in no way depend on the factual circumstances concerning Pennhurst.

It should be noted in any event that, although there have been deficiencies at Pennhurst, "[a]ll parties concede that [Pennhurst] has undergone tremendous improvment since the 1950's . . ." 446 F.Supp. at 1302; 19a. Its population had been reduced from 4,000 in the early 1960's to 1,230 in 1977. *Ibid.* At the same time, its staff was increasing, numbering approximately 1,500 in 1977. Indeed, even respondents' witnesses admitted that Pennhurst had improved in some important areas: staff training (Roos 1-155); buildings (Roos 1-126); hygiene (Lowrie 4-53); clothing (Bowman 13-81); and generally (Dybwad 7-52).

Moreover, since the time of trial substantial additional improvements have been made in the physical plant as well as in the programs; the resident population has decreased below 1,000, while the size of the staff remains the same. The Special Master has documented these improvements by noting Pennsylvania's substantial compliance with the district court's specific orders relating to upgrading Pennhurst. *See* 446 F.Supp. at 1328-29; 85a-88a.

tions in § 6010(1) and (2) of the Act, the United States disavows reliance on § 6010(2), and looks instead to § 6010(3). Compare H. Br. at 41, and P. Br. at 13, with U.S. Br. at 16. Nor do respondents agree on the justification for applying § 6010 to Pennhurst, which admittedly does not receive DD Act funds. The Halderman respondents suggest the § 6010 applies to all mentally retarded people, irrespective of federal funding; the PARC respondents claim that it applies to retarded people in any program receiving any federal monies, regardless of source; and the United States asserts that it applies only to people who have been placed in institutional settings at federal and state expense. Compare H. Br. at 36-37, with P. Br. at 28, and U.S. Br. at 13-15. Similarly, while the first two respondents, for different reasons, believe that the Act requires Pennhurst to be closed altogether, the United States, in accord with the Third Circuit, disagrees. Compare H. Br. at 60 n.85, and P. Br. at 33-34, with U.S. Br. at 35. And, while the Halderman respondents and the United States argue that the district court (through utilization of a Master) should make individual placement determinations for each Pennhurst resident, the PARC respondents maintain that such determinations are not authorized by the Act and, in any event, are an improper exercise of judicial authority. Compare H. Br. at 61-63, and U.S. Br. at 33-34, with P. Br. at 32.

These divergent and contradictory approaches serve only to confuse the basic issue in dispute: Does the DD Act authorize a federal court to order Pennsylvania to provide community living arrangements (CLA's) for all Pennhurst residents (and others),[2] unless it can be shown that Pennhurst is preferable to the specific CLA designed for the individual in question. In our view,

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[2] *See* Argument III *infra*.

the Act plainly does not contemplate such an approach. On the contrary, first in 1975 and subsequently in 1978 Congress explicitly addressed the issue of the states' responsibility for developing CLA's, and adopted requirements that are far different from those mandated by the Court of Appeals. Moreover, even the specific statutory provisions relied on by respondents make clear that Congress at most intended to cut off federal funding to noncomplying states, not to authorize a federal takeover of state programs.[3]

I. THE DD ACT DOES NOT COMPEL THE WHOLESALE CREATION OF COMMUNITY LIVING ALTERNATIVES.

Although respondents insist that § 6010 of the DD Act compels states to establish CLA's for most, if not all, mentally-retarded persons, the fact is that § 6010 does not mention either CLA's or deinstitutionalization at all. Thus, any mandate for deinstitutionalization in § 6010's "findings" can be derived only by inference from general phrases like "appropriate treatment" or "least restrictive" setting. The initial, indeed dispositive, flaw in this analysis is that it simply ignores the sections of the DD Act in which Congress expressly dealt with the issue of deinstitutionalization and the obligation of the states to create CLA's.

The DD Act, as originally enacted in 1975, had specific language regarding the limited obligations of participating states to undertake deinstitutionalization. Section 6062(a)(4) expressly required each state to use not less than 10 percent of its 1976 allotment under the

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[3] We will also show that, in no event, can the relief below be affirmed insofar as it covers people not currently at Pennhurst, and that state law was misapplied by the courts below. Petitioner PPSA does not join in these latter two arguments, however.

DD Act, and not less than 30 percent in succeeding years, "for the purpose of assisting in developing and implementing plans designed to eliminate inappropriate placement in institutions of persons with developmental disabilities." 42 U.S.C. § 6062(a)(4) (repealed). Although this provision plainly demonstrated Congress' concern that the use of community facilities be increased, this experimental beginning is a very different matter from the compulsory transfer of every developmentally disabled person unable to defend his continued presence in an institution, the obligation that respondents purport to find in the Act. Indeed, were respondents correct, the provisions of § 6062(a)(4) would be meaningless because § 6010 would already have compelled the states to spend 100 percent of their allotment, and any other sums necessary, to correct for "inappropriate placement" of individuals in institutions. If this were the result that Congress had in mind, it chose a peculiarly oblique way of saying so.

The intent of Congress regarding CLA's became still more evident in 1978, when it amended the DD Act to relieve the states even of the modest duty imposed by the 1975 statute. Having had three additional years to consider the impact of its 1975 legislation, Congress struck from the statute any requirement that the states employ their allotments to support deinstitutionalization. Instead, Congress added a new section, 42 U.S.C. § 6063(b)(4)(A)(ii), which in essence required the states to concentrate their efforts in at least one of four priority service areas, including not only CLA's but also case management services, child development services, and nonvocational social-developmental services. 42 U.S.C. § 6001(8)(B). Thus, while states remained free to target funds for CLA's, they also retained the discretion to emphasize other priority areas if they deemed them more beneficial. Again, if § 6010 had already forced

CLA's upon the states for all but a few developmentally disabled persons, the policy choices contemplated by § 6063 would be illusory.

The legislative history of the 1978 amendments emphasizes the fact that states were to have substantial freedom in providing care for the developmentally disabled. Discussing the requirements of § 6063, which allowed the states to select areas of the highest priority to them, the relevant House Report noted that "it leaves the individual States some flexibility to choose the service areas in which Federal dollars are most needed. . . ." H.R. Rep. No. 1188, 95th Cong., 2d Sess. 10 (1978), *reprinted* in 6 [1978] U.S. Code Cong. & Ad. News 7355, 7364. The report further noted the preliminary nature of the DD Act, cautioning against "unrealistic expectations which cannot be fulfilled" and identifying the benefits of further study and "an orderly expansion of the program as Federal support increases in future years." *Ibid.* This restrained approach, of course, is difficult to square with the notion that Congress had already mandated CLA's for almost all developmentally disabled persons throughout the nation, regardless of the funds available or the priority choices that an individual state might make.

This is not a case, therefore, where the courts must divine what Congress would have done if some matter or other had come to its attention. Congress specifically spoke to the issue of CLA's in the DD Act, taking the position that they were to be a required, though limited, part of participating state programs in 1975 and, later, one of several opinions that the states might elect. At no time, however, did Congress order the states to implement CLA's as a final solution in most cases, nor insist that the states, as a price of participation in the DD Act, adopt one of many competing views about optimal care for the developmentally disabled.

Despite this straightforward treatment of CLA's in the DD Act, respondents nonetheless claim that § 6010 of the Act compels the states to place developmentally disabled persons in CLA's except in rare cases. According to respondents, the congressional findings that persons with developmental disabilities have "a right to appropriate treatment" (§ 6010(1)) and that the treatment "should be provided in the setting that is least restrictive of the person's personal liberty" (§ 6010(2)) embody a congressional mandate that CLA's replace larger facilities as a general rule. Even aside from the fact that it is inconsistent with § 6062 discussed earlier, this reading is insupportable.

To begin with, the language of § 6010 simply will not sustain it. Although respondents earnestly maintain that no language could make a clearer commitment to CLA's, the fact is that § 6010 does not contain one word about CLA's or deinstitutionalization. Had Congress wished to impose a massive federal requirement of CLA's on the states, it could have borrowed language from § 6062, ordering states to lessen "inappropriate placement in institutions," while making it clear that institutionalization was appropriate only in the exceptional case. Or it could have expressly provided that a state has a duty to provide CLA's unless it can demonstrate that institutional care would be preferable. It is doubtful at best that Congress would order substantial displacement of persons from institutions to CLA's without bothering to mention institutions or CLA's at all.[4]

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[4] Congress not infrequently makes broad declarations of policy without intending to create enforceable legal duties. *See, e.g.*, 42 U.S.C. § 3001 (cataloguing list of objectives concerning "older Americans"). When it intends to impose discrete legal obligations, by contrast, it speaks far more clearly, as it did in the several statutes that respondents mistakenly seek to analogize to the DD Act. *See, e.g.*, 29 U.S.C. § 794 ("No otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal

It is also suggestive that §§ 6010(1) and (2), by their terms, place no obligations on the states. Recognizing this fact, two respondents try to subsume the propositions of subsections (1) and (2) within the language of § 6010(3), which at least talks in terms of state (and federal) obligations. See P. Br. at 25-26 n.36; U.S. Br. at 16. But subsection (3) not only contains no language regarding CLA's or deinstitutionalization,[5] it even omits any mention of the "least restrictive" setting.[6] More-

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financial assistance"); 42 U.S.C. § 1973 ("No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color"); 42 U.S.C. § 2000a(a) ("All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin"); and 42 U.S.C. § 2000d ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance").

[5] On the contrary, § 6010(3), by its terms, unmistakeably contemplates placements in "*institution*[*s*] [as well as] other residential program[s]." (Emphasis supplied.) Moreover, as the brief for the United States acknowledges, Congress realized that the standards contained in § 6010(3) "will not in themselves ensure quality habilitation and adequate treatment programs." H.R. Conf. Rep. No. 473, 94th Cong., 1st Sess. 43 (1975), *reprinted in* 2 [1975] U.S. Code Cong. & Ad. News 943, quoted in Br. for U.S. at 22 n.37. For this reason, Congress made plain that § 6010(3) was not designed "to preempt or supplant any existing Federal or State standards currently in force (*e.g.*, standards applicable to Intermediate Care Facilities for the Mentally Retarded under Medicaid), which may require *more detailed or higher standards of care.*" *Ibid.* (Emphasis supplied.)

[6] As noted by the Halderman respondents, § 6010(3) speaks only to the standards generally governing institutions, not to the appropriateness of any *particular* individual's treatment. H. Br. at 41. For this reason alone, the bootstrap reliance on § 6010(3) as support for the mandate imposed below is misplaced.

over, it does not order the states to do anything, stating only that public funds should not go to substandard facilities and programs.

The legislative history further undercuts the idea of a hidden mandate in § 6010. Without repeating all the legislative history set out in our opening brief at pp. 18-21, it is enough to say that Congress did not intend to impose inflexible federal requirements on the participating states. Thus, for example, the House Report indicated only that states would have to "plan for as much deinstitutionalization as is feasible," further noting that the Act would "prompt some movement of patients from State institutions back into their communities." H.R. Rep. No. 58, 94th Cong., 1st Sess. 8 (1975), *reprinted in* 2 [1975] U.S. Code Cong. & Ad. News 919, 928. Reviewing this legislative history, the dissent below stated: "I fail to see how a duty to 'support' 'feasible' non-institutional care can be elevated to an absolute duty to provide the least restrictive treatment for every individual regardless of cost or available resources." 612 F.2d at 118; 167a.

The United States, apparently recognizing these considerations, nevertheless maintains that, even though the DD Act does not contain a requirement for CLA's, their creation can be ordered as an appropriate remedy for violating *other* requirements. There is no basis for this curious argument.[7] The federal courts have no license

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[7] The position taken by the United States is especially surprising in view of its recognition of the limited purpose of § 6010(3) and its relationship to other statutes administered by the United States itself. *See* n.5 *supra*. The Department of Health and Human Services, for example, has promulgated detailed standards for any state facility seeking medicaid funding for its mentally retarded residents. *See* 42 C.F.R. § 442.400 *et seq*. Those medicaid standards clearly apply to institutions such as Pennhurst. *See* 42 U.S.C. § 1396d(c). Indeed, while Pennhurst gets no funds under the DD

to seize upon the violation of one section of a statute as a means to write in another section that Congress consciously excluded.[8] If a state may maintain institutions under the DD Act, the remedy for substandard institutions is *at most* an order to improve the institutions, not a complete reordering of the policies of state care.[9]

The courts below have simply rushed in where Congress declined to tread. Despite its initial desire for greater utilization of CLA's, Congress elected to move slowly in encouraging their creation, preferring to see results before embarking on a full-scale federal program. Considering the enormous dislocation that results from moving developmentally disabled persons from one facility to another, that course is a reasonable one for Con-

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Act, it receives substantial medicaid funding. In 1978-79, for example, it received more than $7 million of its $32 million budget from federal medicaid funds.

[8] Contrary to the suggestion by respondents, this is not a case where a court invokes its broad remedial powers to reverse a long-standing *constitutional* violation. Rather, the nature of any legal obligation and the concommitant scope of relief is dictated by the statute itself.

[9] The United States claims that "[i]mprovement of Pennhurst would not adequately address the individual needs of persons who should be in community living arrangements." U.S. Br. at 35. Without seeking to dispute the policy implications of this claim, we note simply that the DD Act does not require the states to assure that each person is placed in *the* preferred setting, even assuming such a concept could be implemented in a realistic fashion. Nor is it of any consequence in determining the propriety of relief that the state itself contemplated "the *option* of phasing Pennhurst out," U.S. Br. at 36 (emphasis supplied). An "option" available to a state is a far different matter from a judicial mandate eliminating not only a rethinking of options but also the state's timetable for implementing any option. It should be noted in this regard that Pennsylvania maintains a flexible position with respect to the future of Pennhurst. Surely the propriety of the relief should not depend on whether Pennsylvania ultimately decides, based on its further experience with CLA's, that an improved Pennhurst is the preferred option.

gress to take. It should not be set aside because others would have chosen to move faster.[10]

II. AT MOST, THE DD ACT CONTEMPLATES A FUND CUTOFF FOR NONCOMPLIANCE WITH THE ACT, NOT A FEDERAL TAKEOVER OF STATE PROGRAMS.

Even if the DD Act is read to require the widespread creation of CLA's, as respondents would have it, that obligation is not an absolute federal mandate, but rather a condition of receiving funds under the Act. It follows, then, that the proper remedy for noncompliance is a cutoff of funds, not the federalization of state programs.

The DD Act clearly belies the notion that Congress, in establishing a partnership with the states, intended the states to be only limited partners. Not only is the stated purpose of the Act to "assist States" in improving their own systems, § 6000(b)(1), but the Act repeatedly leaves the states substantial discretion in the development of their programs. *See generally* § 6063. Were this factor not enough, the Act contains a flat declara-

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[10] This is not to suggest that Pennsylvania has not been diligent in developing community facilities for the mentally retarded. Pennsylvania's community placement program was repeatedly described as excellent, even by respondents' experts (*see, e.g.*, Girandeau 5-139; Glenn 6-51, 6-69; Settle 6-168, 7-4). This program has placed many Pennhurst residents in the community (Billyew 24-51), and most of those residents have adjusted well (*see, e.g.*, Girandeau 5-170; Troester 588A; Hill 559A; Vaughn 603A; Auerbach 611A). The development of community placements is complex, however (Roos 1-205). Moreover, while experience with persons with lesser handicaps indicates that such placements may be cheaper than residential care, this will not necessarily be the case with the severely and profoundly retarded (Glenn 6-79). In any event, it is important to coordinate additional services with the provision of community residential placements (*see, e.g.*, Roos 1-207, Glenn 6-71, Settle 6-173, 7-20), something Pennsylvania has done well (Glenn 6-51, Settle 7-4), but which takes careful planning and monitoring.

tion that, "[e]xcept as otherwise specifically provided, nothing in this chapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance or operation of any facility" receiving funds under the Act. 42 U.S.C. § 6003. The federal supervision and control in this case is no more appropriate simply because it is initiated by a federal judge or master.

It is also important that § 6010(3) of the Act speaks only in terms of the proper utilization of public funds. Although Congress might have stated that every state program, regardless of whether it received any funds or not, should comply with the standards of that subsection,[11] it carefully conditioned any obligations on the use of public funds.[12] Indeed, Senator Schweiker, a co-sponsor of the Act, explained that § 6010 provides "protection *by denial of funds* to programs which do not provide appropriate treatment, services, and habilitation or meet appropriate standards." 121 Cong. Rec. 29, 820 (September 23, 1975) (emphasis supplied).[13]

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[11] Such legislation might raise serious constitutional questions, however. *See* brief amici curiae of Illinois, *et al.* at 33-37.

[12] The PARC respondents appear to suggest that § 6010(3) authorizes a fund cutoff of all federal monies received by the state for care of the mentally retarded, and that, as a practical matter, therefore, a fund cutoff would assure compliance with the substantive standards. P. Br. at 41 n.58. Even assuming, contrary to our position as set forth in our initial brief at pp. 14-23, that § 6010(3) creates enforceable duties, respondent is nevertheless in error. First, § 6010(3) explicitly limits any fund cutoff to the noncomplying institution, not to the entire state program. Hence, the dollar amount at issue is far more modest than respondent suggests. Second, irrespective of the amount at issue, Congress at most gave the states the choice of compliance *or* loss of funds. Respondent's view of the practicalities cannot displace the state's discretion in this regard. *See* Rosado v. Wyman, 397 U.S. 397 (1970).

[13] Section 6065 further provides that the Secretary of Health and Human Services can terminate a state's allotment under the

Although respondents claim that a fund cutoff would not be a sufficient remedy, that argument begs the question. Whenever Congress attaches conditions to a grant of funds, rather than imposing them on the states outright, it gives the states the option to accept both the funds and the conditions, or to accept neither. The courts below simply have eliminated the choice extended by Congress, ordering the states to accept the conditions regardless of their willingness to renounce the funds. That remedy does not effectuate the intent of Congress, it cuts it in half.

This Court has recognized these principles in *Rosado* v. *Wyman*, 397 U.S. 397 (1970), discussed in our main brief at 35-36. There, noting that New York had acted in violation of the federal welfare statute, the Court specifically found that "the state ha[s] alternative choices of assuming the additional cost" of complying with the statute, "or not using federal funds to pay welfare benefits according to a plan that [is] inconsistent with federal requirements." 397 U.S. at 420-21.[14] Here,

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DD Act for noncompliance with the general statutory standards, inincluding the requirement that state programs receiving DD Act funds protect the interests described in § 6010. *See* § 6063 (b) (5) (C). We note in this regard that Pennsylvania's allotment under the Act continues to be approved by HHS, despite the Justice Department's position in this case. *See also* n.7 *supra*.

[14] Respondents claim that Cannon v. University of Chicago, 441 U.S. 677 (1979), and Regents of the University of California v. Bakke, 438 U.S. 265, 419-420 n.26 (1978) (concurring opinion), justify a different result. Aside from the fact that the *Bakke* opinion was not an opinion for the Court, the statutes at issue in those cases specifically barred discrimination in university admissions, in addition to authorizing a fund cutoff by the federal government. The Court in *Cannon* found that Congress intended to allow specific enforcement of the anti-discrimination section, thus allowing courts to order the admission of applicants who demonstrate that they have been discriminated against. The limited intrusion of placing an applicant in an ongoing university program

assuming that the failure to develop CLA's—to an extent and in the fashion dictated by the court below—is inconsistent with the conditions imposed by the DD Act, the states have the same choice: comply with the conditions or get out of the federal program. The federal courts are not privileged to force a preferred choice upon them.

III. IN NO EVENT CAN THE RELIEF BELOW BE AFFIRMED INSOFAR AS IT APPLIES TO PERSONS NOT CURRENTLY AT PENNHURST.

Even assuming that § 6010 imposes an enforceable obligation on the states to create CLA's, the judgment below still went too far in that it affirmed relief covering not only Pennhurst residents, but also others on the waiting list, as well as those not even on the waiting list but who "may become residents of Pennhurst." 446 F.Supp. at 1300 and 1326; 14a and 79a-80a.[15] *See also* 612 F.2d at 115; 159a (rights extend to "future applicants" for services). These aspects of the judgment below were plainly without legal basis.

All the briefs in this case recognize that Congressional concern in the DD Act focused on the residents of state institutions and the conditions they faced. No simple equation can be made between these people and the mentally retarded in general, however. Many mentally retarded citizens live with parents or other family members or relatives, some live with friends or guardians,

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was found compatible with the purposes of the Act. The matter is far different here where respondents would have a court force the states to create new facilities for the retarded.

[15] There are approximately 2,000 people currently on the waiting list for Pennhurst. These people are not now in state or county custody.

still others live alone, and some reside in privately-operated facilities. To read § 6010 as creating an absolute right to state-funded treatment for all such people would have staggering implications. It is one thing to say that a state has the obligation to afford appropriate services to those in its custody;[16] it is quite another to say that the state has a privately enforceable federal duty to provide such services to the "more than two million persons with developmental disabilities in the United States." 42 U.S.C. § 6000(a)(1). Nothing in the DD Act or its legislative history suggests that the Congress intended to place such an enormous open-ended obligation on the states' fisc.

We pointed out in our main brief at 36-37 n.57 that if § 6010 imposed the obligations declared by the court below, such an enactment would exceed the constitutional limits of Congress' power either under the Spending Clause or under Section 5 of the Fourteenth Amendment. The court below disagreed, claiming that the DD Act contained a sufficient Section 5 constitutional predicate in that it was intended "to enforce recognized constitutional rights. . . ." 612 F.2d at 98 n.17; 117a n.17. In this regard, the court cited *Ingraham* v. *Wright*, 430 U.S. 651, 673 (1977), as support for a Fourteenth Amendment right "to be free from and to obtain judicial relief for unjustified intrusions on personal security." 612 F.2d at 98; 117a.

But whatever minimal plausibility *Ingraham*, or *Jackson* v. *Indiana*, 406 U.S. 715, 738 (1972) (the right to a commitment whose nature and duration bears some reasonable relationship to its purpose), or *O'Connor* v. *Donaldson*, 422 U.S. 563, 576 (1975) ("a State cannot constitutionally confine without more a nondangerous

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[16] The focus of the Act, and of § 6010 in particular, is to help provide *appropriate* treatment for those already *receiving* treatment

individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends"), might have with respect to the rights of mentally retarded persons in state institutions,[17] the argument does not extend to the vast majority of the developmentally disabled who live at home or in other private placements. They have not been deprived of their liberty by the state, nor are they subject to any unjustified intrusions on their personal security at the hands of the state. With respect to such privately situated persons, there is no Fourteenth Amendment right to enforce and, therefore, no Section 5 predicate. Indeed, even the district court, which found in favor of respondents on virtually every legal theory they proffered (except, notably, the DD Act), acknowledged, "No constitutional mandate has been called to our attention which would require a state to provide habilitation for its retarded citizens." 446 F. Supp. at 1318; 60a.

Not surprisingly, respondents have scrupulously avoided discussing those aspects of the relief relating to persons not currently at Pennhurst. In fact, the United States specifically claims that this case is limited to mentally retarded persons "who have been placed in institutions at federal and state expense, . . ." U.S. Br. at 14; *see also id.* at 15 n.26. In view of these considerations, this Court, irrespective of any other conclusions it might reach, should vacate the relief insofar as it applies to people not currently at Pennhurst.

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[17] It should be noted in this regard that *no* federal court, except the district court in this case, has ever ordered deinstitutionalization as a constitutional remedy in a disputed case involving treatment of the retarded in state institutions. See brief amici curiae of Illinois, *et al.* at 33-37.

IV. THE ERRONEOUS INTERPRETATION OF STATE LAW BY THE COURT OF APPEALS IS BASED ON A CLEARLY IMPROPER APPLICATION OF PENNSYLVANIA'S RULES OF STATUTORY CONSTRUCTION.

Respondents assert that this Court should defer to the Court of Appeals interpretation of state law and that, in any case, the lower court's interpretation was correct and provides an independent basis for the decision below. We have already dealt with the last two arguments at length, showing both that the interpretation of state law was erroneous and that, in any event, the Court of Appeals itself made clear that state law did not provide a sufficient basis for its judgment. Pet. Br. at 39-43. Respondents' claim that this Court should defer to the court below's reading of state law is equally without merit. While it is true that the Court generally defers to a lower federal court's interpretation of local law, such deference is inappropriate when that interpretation is plainly wrong. It is even less justified when the lower court has clearly misapplied state rules of statutory construction.

In this case, the court below relied heavily on legislative debate in supporting its conclusion that Pennsylvania law creates a "right to treatment." This reliance was in clear violation of Pennsylvania's rules of statutory construction. Under Pennsylvania law, the remarks of individual legislators in debate are not part of the legislative history and are, therefore, not relevant to the meaning of a statute. *City of Philadelphia* v. *Depuy*, 431 Pa. 276, 244 A.2d 741 (1968); *Zemprelli* v. *Thornburgh*, 47 Pa. Cmwlth. Ct. 43, 407 A.2d 102 (1979). This error seriously undermines the validity of the lower court's analysis and requires review by this Court.

CONCLUSION

The decision of the Court of Appeals should be reversed.

Respectfully submitted,

HARVEY BARTLE, III
ALLEN C. WARSHAW
ROBERT B. HOFFMAN
NORMAN J. WATKINS
16th Floor, Strawberry Square
Harrisburg, Pa. 17120
717/783-1471

Attorneys for Petitioners Commonwealth of Pennsylvania, et al.

ALAN J. DAVIS
Municipal Services Building
Philadelphia, Pa. 19107
215/MU 6-5230

Attorney for Petitioners Mayor of Philadelphia, et al.

THOMAS KITTREDGE
DOUGLAS B. FOX
MORGAN, LEWIS & BOCKIUS
2107 The Fidelity Building
Philadelphia, Pa. 19109
215/875-5636

Attorneys for Suburban County Petitioners

JOEL I. KLEIN
H. BARTOW FARR, III
SUSAN L. CARNEY
ROGOVIN, STERN & HUGE
1730 Rhode Island Ave., N.W.
Washington, D.C. 20036
202/466-6464

Attorneys for Petitioner Pennhurst Parents-Staff Ass'n